

**Before the
Federal Communications Commission
Washington, D.C.**

In the Matter of

**Petition of CRC Communications of Maine, Inc.
and Time Warner Cable Inc.
for Preemption Pursuant to Section 253
of the Communications Act, as Amended**

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WC Docket No. 10-143

COMMENTS OF UNITEL, INC.

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Summary

UniTel, Inc. (“UniTel”), by counsel, hereby files these comments in response to the “Petition for Preemption” (the “Petition”) filed on July 15, 2010 by CRC Communications of Maine, Inc. (“CRC”) and Time Warner Cable, Inc. (“TWC”) in the above-captioned proceeding. The factual contentions that CRC and TWC make in the Petition with respect to actions taken by the Maine PUC are contrary to what actually occurred and fail to properly reflect the very section 251(f)(1) proceeding that CRC and TWC requested the MPUC to undertake. So too, the legal underpinnings of the claims made in the Petition run afoul of explicit language in section 251(c)(1), section 54.301(a) of the Commission’s rules, and the decisions referenced by UniTel that have been issued by the Commission. Moreover, CRC and TWC’s suggestion that the *National Broadband Plan*’s discussion is binding law is shown to be in error, let alone based on the same incomplete and inaccurate discussion upon which the Petition is based. Even if one is able to leap over these facts and law, the interpretation that CRC and TWC would want the Commission to make with respect to actions under section 253 would write out of the Act section 251(f)(1), a result that simply cannot be done. Accordingly, UniTel respectfully request that the Commission dismiss the Petition in its entirety.

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I. Introduction and Summary.

Based on the submissions made by CRC before the Maine Public Utilities Commission (the “Maine PUC” or “MPUC”), CRC and TWC have failed in their Petition to provide to the Federal Communications Commission (“Commission”) the pertinent and controlling facts with respect to the CRC request for interconnection. Those facts, which are provided herein, demonstrate it was CRC and TWC who requested that the Maine PUC institute a proceeding to investigate whether to remove UniTel’s rural exemption established under section 251(f)(1) of the 1996 revisions to the Communications Act of 1934, as amended (the “Act”) and therefore abandoned CRC’s then pending request to arbitrate an interconnection agreement with UniTel.

¹ UniTel is an incumbent local exchange carrier (“ILEC”) and a rural telephone company as defined in 47 U.S.C. §153(37) as it serves approximately 4,100 access lines through four (4) exchanges located in rural Maine.

² See *Public Notice*, WC Docket No. 10-143, DA 10-1423, released July 29, 2010.

Rather than address these facts, CRC and TWC claim that the issue before the Commission is the right of CRC to negotiate (and potentially arbitrate) a section 251(a) interconnection arrangement as well as a section 251(b) arrangement. With respect to section 251(a), there is no issue because UniTel has fulfilled this duty by interconnecting directly and indirectly with the Public Switched Telephone Network (“PSTN”).³ So too, CRC’s section 251(b) request was addressed, as it needed to be, within the very section 251(f)(1) proceeding that the Maine PUC conducted (as was requested by CRC).

Thus, when the facts are fully known, it is clear that CRC encouraged the Maine PUC to undertake a section 251(f)(1) proceeding and then confirmed the scope of the section 251(b) and (c) interconnection request that it had made of UniTel. And, ultimately, the section 251(f)(1) rural exemption proceeding was undertaken in Case 2009-40 as CRC requested.

Not liking the ultimate outcome from that proceeding, however, CRC and TWC’s Petition amounts to nothing more than an effort to end run the statutory framework that governs this proceeding – section 251(f)(1). No “spin” or selective recitation of the facts through the Petition or novel interpretation of the relevant law can alter this conclusion. CRC and TWC

³ The scope of Section 251(a) was addressed by the FCC in its *Atlas Decision*. *In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corporation*, Memorandum Opinion and Order, File No. E-97-003, FCC 01-84, released March 13, 2001. In the decision, the FCC stated that:

We have previously held that the term “interconnection” refers solely to the physical linking of two networks, and *not* to the exchange of traffic between networks.

...

We find nothing in the statutory scheme to suggest that the term “interconnection” has one meaning in section 251(a) and a different meaning in section 251(c)(2).

Id. at ¶¶23-25 (emphasis in original).

chose their remedial procedure – the section 251(f)(1) rural exemption proceeding. CRC and TWC cannot be permitted to end run that process through the Petition.

Absent that conclusion and taking the Petition to its logical conclusion, CRC and TWC's position would suggest that anytime a rural exemption is not removed pursuant to the explicit section 251(f)(1) procedures, then that decision is a barrier to entry under section 253 of the Act. Thus, essentially, CRC and TWC seek a construction of section 253 that writes section 251(f)(1) out of the Act. Such result cannot be condoned as it would violate time honored principles of statutory construction.⁴ Thus, any effort to suggest that section 253 is at issue here should be rejected outright.

II. CRC and TWC's Recitation of the Alleged Actions Requested of the Maine PUC Omits Controlling Facts that Demonstrate an Effort Through the Petition to End Run the Very Section 251(f)(1) Process that CRC Requested be Undertaken.

UniTel respectfully requests that the Commission critically review the facts and circumstances leading up to the submission by CRC and TWC of the Petition. Those facts lead to the inescapable conclusion that the Maine PUC was being asked to review a request for interconnection that included a request for multiple section 251(b) services, section 251(c)(1) negotiations, 251(c)(2) network interconnection, and section 251(c)(5) notifications.

Conspicuously absent from the CRC and TWC Petition is any specific acknowledgment that CRC (and thus TWC) requested the Maine PUC to dismiss CRC's section 251(a) and section

⁴ At the outset, CRC and TWC, in citing the barriers to entry section 253(a) of the Act in their Petition, fail to acknowledge that this section of the statute is specifically prefaced by the caveat that it applies "In General" and does not state that it applies specifically to supersede sections 251(f)(1) or 251(f)(2).

251(b) initial request for arbitration under section 252, thereafter submitting and then clarifying explicitly that CRC wanted the Maine PUC to proceed with a section 251(f)(1) rural exemption proceeding.

The Act provides the authority solely to the state commission to conduct a section 251(f)(1) proceeding and to make the necessary findings, and the Maine PUC reached a fact-intensive decision in that proceeding consistent with the Act – a decision that CRC and TWC have not challenged. Ultimately, it is the section 251(f)(1) decision reached by the Maine PUC that, in UniTel’s view, truly underlies CRC and TWC’s efforts and their apparent consternation arising from their failure to bear their burden of proof with respect to the termination of the UniTel section 251(f)(1) rural exemption. CRC and TWC’s consternation, however, cannot be the basis for any preemption of the Maine PUC denial of CRC’s request to terminate UniTel’s section 251(f)(1) rural exemption. The instant Petition should, therefore, be denied.

The Maine PUC’s May 5, 2008 Order in the case before it in Docket No. 2007-611—speaks for itself.⁵ However, in reciting the history of the *May 5th Order* within the Petition, CRC and TWC conveniently fail to note the scope of CRC’s interconnection request at issue in that case, or the companion decision reached by the Maine PUC on reconsideration of the *May 5th Order*.

As the *May 5th Order* states, CRC’s interconnection request was issued on July 5, 2007 and specifically asked for “interconnection with [name of ITC] pursuant to section 251(a), (b)

⁵ See *CRC Communications of Maine, Inc. Petition for Consolidated Arbitration with Independent Telephone Companies Towards an Interconnection Agreement Pursuant to 47 U.S.C. 151, 252, Order*, Docket No. 2007-611, issued May 5, 2008 (the “*May 5th Order*”).

and (c) of the Telecommunications Act of 1996.”⁶ Thus, the issue of the application of section 251(c) to UniTel was found by the Maine PUC to be squarely raised by the CRC request for interconnection. Equally relevant (but not mentioned by CRC and TWC) was the request that CRC made with respect to how to address this matter, a CRC request more fully explained in the Maine PUC’s Order on Reconsideration of the *May 5th Order*.⁷

In their Petition, CRC and TWC state that “CRC and TWC presumed that CRC would be able to vindicate its interconnection rights more efficiently by complying with the MPUC’s flawed order than by challenging it (whether by asking the Commission to preempt it at that time or by seeking relief in federal or state court).”⁸ This “spin” is astonishing.

CRC specifically stated in the April 18, 2008 submission referenced by the Maine PUC in its *June 5th Reconsideration Order* and quoted above as follows:

On behalf of CRC Communications of Maine, Inc. (“CRC”), I am writing to convey the following comments of CRC in response to the Examiner’s Report (“Report”), issued on April 2, 2008. In brief, CRC supports the Hearing Examiner’s recommendation to immediately commence a proceeding to determine whether to remove the “rural exemption” established pursuant to 47 U.S.C. 251(f)(1) applicable to the Independent Telephone Companies (ITCs) listed in CRC’s Petition. *CRC accordingly seeks leave to withdraw, without prejudice, its pending request for Section 252 arbitration at this time, related to the obligations set forth in Sections 251(a) and (b) (while preserving its request for interconnection for these same duties described in 47 U.S.C. Sections 251(a) and (b)).* (emphasis added)⁹

⁶ *May 5th Order* at 1 quoting CRC’s July 5, 2007 Letter.

⁷ See *CRC Communications of Maine, Inc. Petition for Consolidated Arbitration with Independent Telephone Companies Towards an Interconnection Agreement Pursuant to 47 U.S.C. 151, 252, Order on Reconsideration*, Docket No. 2007-611, issued June 5, 2008 (the “*June 5th Reconsideration Order*”). A copy of the *June 5th Reconsideration Order* is attached hereto as Exhibit 1.

⁸ Petition at 7.

⁹ Letter from Alan M. Shoer, Esq., Counsel to CRC Communications of Maine, Inc., to Karen M. Geraghty, Administrative Director, Maine Public Utilities Commission, Docket No. 2007-611, dated April 18, 2008 (the “*April 18th CRC Letter*”) at 1; see also *June 5th Reconsideration Order* at 1-2. A copy of the *April 18th CRC Letter* is attached hereto as Exhibit 2.

Thereafter, CRC stated:

CRC believes that the most expeditious path to interconnection with these ITCs will be to participate in the rural exemption proceeding recommended by the Hearing Examiner. Accordingly, CRC seeks leave to withdraw, without prejudice, its pending request to arbitrate interconnection pursuant to 47 U.S.C. Sections 251(a) and (b) notwithstanding the rural exemption of Section 251(f)(1). This action will allow the [Maine PUC] sufficient opportunity to determine first whether to lift the rural exemption as applied to these ITCs before any further negotiations and/or arbitration. (footnote omitted)¹⁰

Ultimately, the Maine PUC agreed.

We hereby grant CRC's request to withdraw its Petition for Arbitration, as articulated in its April 18, 2008 Exceptions to the Examiner's Report. UniTel's motion to dismiss the Petition for Arbitration is therefore moot. Docket 2007-611 shall be closed, with further filings to be made in the individual rural exemption cases, Dockets, No. 2008-214, 2008-215, 2008-216, 2008-217, and 2008-218.¹¹

Understandably, the Maine PUC properly relied upon CRC's voluntary withdrawal of its initial arbitration petition, as did UniTel. And, moreover, the voluntary nature of the withdrawal cannot be brushed aside as CRC and TWC have suggested.

If there was any question regarding CRC's efforts to implicate section 251(c) requirements, they were laid to rest by CRC itself in its submissions to the Maine PUC issued between the *May 5th Order* and the *June 5th Reconsideration Order*. In response to an order from the MPUC requiring CRC to provide a "detailed statement of request",¹² CRC responded on

¹⁰ *April 18th CRC Letter* at 2.

¹¹ *June 5th Reconsideration Order* at 2- 3.

¹² See *CRC Communications of Maine, Inc. Petition for Consolidated Arbitration with Independent Telephone Companies towards an Interconnection Agreement Pursuant to 47 U.S.C. 151, 252; Maine Public Utilities Commission Investigation pursuant to 47 U.S.C. § 251(f)(1) regarding CRC Communications of Maine's request of UniTel, Inc., et al., Docket Nos. 2007-611, 2008-214, et al., Procedural Order*, issued May 12, 2008 (the "*May 12th Procedural Order*"). A copy of the *May 12th Procedural Order* is attached hereto as Exhibit 3.

May 14, 2008 stating that “CRC requests interconnection and related services pursuant to Sections 251(a), 251(b), 251(c)(1) and 251(c)(2)”.¹³ Thereafter, on May 19, 2008, CRC amplified its statement.

Second, UniTel's May 14, 2008 letter asserts that counsel for CRC “made clear” that CRC is not seeking any interconnection rights secured by 251(c)(2-6). It is accurate to say that CRC is not seeking interconnection with Unitel (and the other rural ILECs) with respect to UNEs (251(c)(3)), resale (251(c)(4)), or collocation (251(c)(6)).

However, now that the [Maine PUC] has determined that a request for interconnection with a rural ILEC necessarily implicates Section 251(c)(because that is the only section that triggers a rural exemption analysis per 251(f)(1)(A)) CRC also seeks the interconnection protections that complement its request for interconnection pursuant to 251(a) and (b), and which are provided by 251§§ (c)(1), 251(c)(2) and 251(c)(5).¹⁴

Moreover, CRC admitted that any negotiation of a section 251(b) request is to be addressed under section 251(c)(1). “*For example, 47 U.S.C. § 251(c)(1) provides the duty to negotiate the obligations in 251(b).*”¹⁵ And, thereafter CRC stated,

CRC seeks the protections afforded by these cited sections of 251(c), and requests that the rural exemption be lifted so as to allow further negotiations towards an interconnection agreement for the interconnection rights secured by these sections of 251(c) that complement the obligations for interconnection set forth in 47 U.S.C. §§ 251(a) and (b) of the Tel Act.¹⁶

¹³ CRC Communications of Maine, Inc.’s Statement of Request for Interconnection With UniTel, Inc., Docket No. 2008-214, dated May 14, 2008 (the “*CRC May 14th Statement*”) at 2. A copy of the *CRC May 14th Statement* is attached hereto as Exhibit 4.

¹⁴ Letter from Alan M. Shoer, Esq., Counsel to CRC Communications of Maine, Inc., to Karen M. Geraghty, Administrative Director, Maine Public Utilities Commission, Docket Nos. 2007-611 and 2008-214, dated May 19, 2008 (the “*May 19th CRC Letter*”) at 2. A copy of the *May 19th CRC Letter* is attached hereto as Exhibit 5.

¹⁵ *Id.* (emphasis added).

¹⁶ *Id.*

Further, at no time did CRC and TWC retain a reservation of rights to challenge the MPUC's authority to conduct a rural exemption hearing pursuant to the CRC request for interconnection. This was confirmed on April 7, 2010 at the Hearings in Docket 2009-40 (the section 251(f)(1) rural exemption proceeding before the Maine PUC) when Ms. Julie Laine, Group Vice President of Time Warner Cable, Inc. and Chief Regulatory Counsel, testified under questioning from MPUC Commissioner Jack Cashman that the MPUC was "the one empowered with the decision making power in this case for certain."¹⁷

Without question, the *CRC April 18th Letter* and Ms. Laine's testimony at the hearing is a far cry from the Petition's suggestion that "CRC and TWC presumed that CRC would be able to vindicate its interconnection rights more efficiently by complying with the MPUC's flawed order than by challenging it (whether by asking the Commission to preempt it at that time or by seeking relief in federal or state court)."¹⁸ This *post hoc* rationalization of its position cannot be squared with the specific submissions by CRC and reliance on them by the Maine PUC and UniTel.

Thus, when the facts of what actually occurred before the Maine PUC are reviewed, the Petition is nothing but an effort by CRC and TWC to make an end run around the very process they wanted to use as outlined in section 251(f)(1) of the Act. It is irrefutable that CRC and TWC abandoned their prior position and specifically petitioned the Maine PUC to proceed with a section 251(f)(1) proceeding. Accordingly, the Commission should dismiss the Petition outright.

¹⁷ See Transcript of April 7, 2010, Testimony of Julie P. Laine, Docket No. 2009-40 (Maine PUC), pg 126, lines 9-10.

¹⁸ Petition at 7.

III. Even Assuming One Needs to Consider the Substantive Scope of the Duty to Negotiate Vis-à-vis Sections 251(a) versus Section 251(b) and Section 251(c) Interconnection Duties, CRC and TWC Fail to Address the Applicable Commission Decisions and Rules that Undermine the Petition's Contentions.

Even assuming further analysis of the Petition is required, CRC and TWC's efforts still fail and the Petition should, therefore, be denied. While CRC and TWC attempts to leap over the explicit Congressional language of section 251(c) to claim that the Maine PUC violated some independent right of CRC to negotiate interconnection under section 251(a), the Commission has already spoken to this contention and rejected it. So too, the same CRC and TWC claim of an independent right to negotiate section 251(b) duties without regard to section 251(c)(1) has also been rejected by the Commission. Thus, CRC and TWC's effort to create an independent right to negotiate section 251(a) and/or an independent right under section 251(b) duties without regard to section 251(c)(1) has no basis.

Without question, it is solely section 251(c)(1) that establishes the requirement of negotiations and the triggering of the application of the procedures set forth in section 252.¹⁹

Section 251(c)(1) states that:

*The duty to negotiate in good faith in accordance with section 252 of this title the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section [i.e., section 251(b)] and this subsection [i.e., section 251(c)]. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.*²⁰

¹⁹ Section 252 of the Act sets forth the "Procedures for Negotiation, Arbitration, and Approval of Agreements." See 47 U.S.C. § 252.

²⁰ 47 U.S.C. § 251(c)(1)(emphasis added).

Moreover, the language not only covers the specific requirements of section 251(c) but also “the duties” found in section 251(b), subsections 1 through 5.²¹ No mention of section 251(a) is made.

Not surprisingly, therefore, the Commission, in establishing its interconnection rules, specifically noted the location of this duty to negotiate as an additional interconnection obligation of certain incumbent local exchange carriers and thus properly placed the implementation of this Congressional directive *within the subpart D of its Part 51 interconnection rules* under the heading “Additional Obligations of Incumbent Local Exchange Carriers.” Specifically, the Commission’s rule reiterates the essence of the statutory language:

An incumbent LEC shall negotiate in good faith the terms and conditions of agreements to fulfill the duties established by sections 251 (b) and (c) of the Act.²²

While it is obvious that CRC and TWC’s position disregards this structure, the statute and corresponding rule are specific and unquestionably clear as to its placement within the hierarchy of the interconnection rules.

CRC and TWC cite to no statute or specific Commission rule that would otherwise provide CRC and TWC with any right to require negotiation (and/or arbitration) of interconnection standards established under section 251(a) of the Act. This is understandable since there is neither any statute nor rule establishing any right or requirement nor any interconnection standards under section 251(a).²³ While other state commissions and courts may

²¹ *Id.*

²² 47 U.S.C. §51.301(a).

²³ As set forth herein, section 251(a) does not establish any standards or requirements for negotiation or arbitration of interconnection terms. Section 251(a) only establishes a general duty for carriers; it does not afford other entities such as CRC or TWC any rights to request, demand or choose how a subject carrier fulfills its general duty to be directly or indirectly connected to the public switched network. CRC and TWC’s petition is further flawed by

have come to some other conclusion,²⁴ the parties' acquiescence or voluntary agreement to negotiate and perhaps arbitrate terms and conditions that may arguably arise under section 251(a) does not change the law.

The application of the procedures set forth in Section 252 of the Act does not arise unless and until a carrier is subject to Section 251(c)(1). While Section 252(a)(1) of the Act discusses "voluntary negotiations" (which, as a result, cannot be forced upon a carrier) and then *only* in the context of disregarding any standards that would otherwise apply under "subsections (b) and (c) of section 251 of this title",²⁵ section 251(a) is completely outside the scope of Section 252.

Regardless of whatever novel interpretation that CRC and TWC may want to apply, CRC and TWC fail to acknowledge that the Commission has already determined that section 251(a) is *not* subject to negotiations or arbitration. As the Commission has stated, "[n]either the general interconnection obligation of section 251(a) . . . is implemented through the negotiation and arbitration scheme of section 252."²⁶ The Commission then further explained this conclusion in footnote 44 to paragraph 18.

suggesting a right that CRC and TWC do not possess. The general duty nature and very limited scope of section 251(a) is further evidenced by the fact that in the Commission's initial decision implementing section 251/section 252 of the Act, the only rulemaking proceeding to address Section 251(a), it takes the Commission only seven paragraphs of discussion (in a 700-plus page order) to complete its review of this section of the Act. *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Radio Service Providers, First Report and Order*, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd 15499 (1996) at 15988-15992 (¶¶ 992-998).

²⁴ *See* Petition at 22-23.

²⁵ 47 U.S.C. § 252(a)(1).

²⁶ *In the Matter of CoreComm Communications, Inc., and Z-Tel Communications, Inc. v. SBC Communications, Inc. et al., Order on Reconsideration*, File No. EB-01-MD-017, 19 FCC Rcd 8447 (2004) ("Z-Tel") at 8454-8455 (¶18) (footnote omitted) (footnote omitted) (discussing *Cellexis Int'l, Inc. v. Bell Atlantic NYNEX Mobile Systems, Inc., et al., Memorandum Opinion and Order*, 16 F.C.C.R. 22887 (2001)). Notwithstanding the fact that certain aspects of the Z-Tel

Section 251(c) obligates incumbent LECs “to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection [*i.e.*, subsection (c)].” 47 U.S.C. § 251(c)(1). It does not require such negotiation with respect to section 251(a). Similarly, section 252(a)(1), 47 U.S.C. § 252(a)(1), permits ILECs to negotiate agreements “without regard to the standards set forth in subsections (b) and (c) of section 251,” but does not mention subsection 251(a).²⁷

Finally, while CRC and TWC cite²⁸ to the Commission’s *First Memorandum Opinion and Order on Reconsideration* regarding telephone number portability,²⁹ CRC and TWC fail to note the controlling and operative discussion that is relevant here within that Commission decision. The relevant discussion is the fact that the Commission has confirmed that section 251(b) duties are *not* subject to negotiation in the absence of the removal of the section 251(f)(1) rural exemption for rural telephone companies like UniTel.

We note, however, that Section 251(f)(1) *does exempt* rural carriers from the duty to negotiate in good faith over the terms and consideration of agreements to fulfill the duties of Section 251(b), including number portability.³⁰

proceeding were vacated by the courts on grounds that do not affect the FCC’s fundamental analysis and observations in *Z-Tel* of the issues relevant to this matter, the FCC came to similar conclusions about this interplay between Sections 251(a), (b), and (c), and the standards under which negotiations and arbitrations under Section 252 are applicable.

²⁷ *Id.* at 8455 (¶18, n.44).

²⁸ *See, e.g.*, Petition at 4-5 and n.11, 6 and n. 15.

²⁹ *See In the Matter of Telephone Number Portability, First Memorandum Opinion and Order on Reconsideration*, CC Docket No. 95-116, RM-8535, 12 FCC Rcd 7236 (1997)(“*LNP Reconsideration Order*”).

³⁰ 12 FCC Rcd at 7304 (¶ 117, n.393)(emphasis added). While CRC and TWC cite this paragraph, they did not cite the operative footnote. *See* Petition at 6 and n. 15.

Likewise, CRC and TWC contention that the Maine PUC “followed a single unpublished court decision from 2006”³¹ – *Brazos*³² – is false. The Maine PUC quoted the very language from the *LNP Reconsideration Order* provided above.³³ While one might question the intent of CRC and TWC’s silence with respect to the quoted language, it simply demonstrates their lack of substantive rebuttal to it.

Moreover, any criticism by CRC and TWC of *Brazos* is misplaced. While not citing section 51.301(a) of the Commission’s rules, *Z-Tel* or the *LNP Reconsideration Order*, the *Brazos* court’s analysis rested upon a reading of the plain language of section 251(c)(1) and reached a result consistent with the referenced Commission’s rules and decisions.³⁴ As noted by the *Brazos* court, an Incumbent Local Exchange Carrier is free to negotiate issues outside of its duties under the Act, but may not be required to do so;³⁵ a result that is consistent with section 252(a)(1) of the Act. Likewise, by referencing the fact that section 251(b) duties are subsumed in the requirements of section 251(c)(1),³⁶ the *Brazos* decision is consistent with the finding in footnote 393 of the *LNP Reconsideration Order*, let alone *Z-Tel* that there is no independent right to require negotiation of section 251(a).³⁷ Thus, the reasoning of *Brazos* is not at odds with the structure of the Act, the Commission’s rules or the Commission’s decisions. CRC and TWC’s protestations to the contrary should be rejected.

³¹ Petition at 6.

³² *Sprint Communications Company L.P. v. The Public Utility Commission of Texas*, Case No. A-06-CA-065-SS, filed August 14, 2006 (W.D. Texas) (“*Brazos*”).

³³ See *May 5th Order* at 12-13; see also *id.* at 14.

³⁴ *Brazos* at 9, 10.

³⁵ *Id.* at 7-8.

³⁶ *Id.* at 9 (n.3).

³⁷ *Id.* at 9.

In light of the above, and even assuming one would need to consider the claim that there is a statutory or Commission rule-based duty to negotiate under section 251(a) and/or an independent right to negotiate 251(b) outside of that identified in section 251(c)(1) of the Act, CRC and TWC have failed to address the applicable Commission decisions and rules that reject that claim. Thus, for the reasons stated herein, the Petition should be denied.

IV. Reliance by CRC and TWC on the National Broadband Plan is Equally Misplaced.

CRC and TWC trumpet statements made in paragraphs 2 and 3 of Recommendation 4.10 of the “Connecting America: The National Broadband Plan” (the “*NBP*”) to suggest that the Commission has already ruled upon the issues that the Petition seeks to have “clarified.”³⁸ Setting aside the fact that the *NBP* has no legal weight until a specific recommendation has been subjected to a proper notice of rulemaking, an opportunity for comment has taken place, and a Commission action has been issued, the *NBP* cannot (as CRC and TWC effectively contend) circumvent explicit statutory provisions at issue here – sections 251(c)(1) and 251(f)(1). Notwithstanding this flaw in CRC and TWC’s Petition is the fact that TWC seeks to perpetuate that which it provided to the Commission staff responsible for this portion of the *NBP*, *i.e.*, the same incomplete and otherwise inaccurate description by TWC of what was going on in Maine in the rural exemption proceedings that CRC had requested be undertaken by the Maine PUC.

See Section II, *supra*.

Specifically, the underlying facts upon which the *NBP* staff apparently relied were those that were inaccurately portrayed by TWC in a November 12, 2009 *ex parte* letter (the “*TWC Ex Parte Letter*”).³⁹ Within the *TWC Ex Parte Letter*, TWC filed an Attachment entitled

³⁸ *See, e.g.*, Petition at 9-10, 17-18, 23, 26.

³⁹ *See NBP*, Chapter 4 Endnotes, at endnotes 90, 91, and 92. UniTel notes that the *NBP*’s reference in endnote 93 regarding section 251(a) duties are not at issue since UniTel is

“Representative Obstacles To Launch of TWC VoIP Services in Rural Areas” (the “Attachment”), and within it made the following inaccurate statement regarding the scope of their rural exemption petition, “TWC, through its wholesale telecommunications carrier, CRC Communications of Maine, formally requested interconnection with five rural ILECs on July 5, 2007. *The request sought 251(a) interconnection only*, but the ILECs refused to negotiate, citing their rural exemption.”⁴⁰ This contention is wholly inaccurate. Perpetuation of that improper analysis within the *NBP* by apparent reliance solely on TWC’s inaccurate statements, while disappointing, does not make the analysis correct for the reasons stated in Sections II and III, *supra*.

Why the Commission staff responsible for this section of the *NBP* failed to test the completeness of the contentions of TWC and otherwise failed to review and research the Commission’s own rules and decisions is unknown. What is known, however, is that any criticism by CRC and TWC or within the *NBP* of the *Brazos* decision or the Maine PUC *May 5th Order* are without basis as both the *Brazos* decision and the MPUC’s *May 5th Order* are wholly consistent with the reasoning of the Commission in *Z-Tel* and in the *LNP Reconsideration Order* as well as section 51.301(a) of the Commission’s rules. Likewise, what should now also be clear is that the factual contentions regarding the actions of the Maine PUC claimed by TWC in the *TWC Ex Parte Letter* upon which the *NBP* staff apparently relied are highly questionable.

interconnected to and a part of the PSTN. Thus, UniTel has fulfilled its duties under Section 251(a)(1).

⁴⁰ *TWC Ex Part Letter*, Attachment at 4 (emphasis added). Inexplicably, the Attachment goes on to state: “Without an enforcement mechanism to compel compliance with the 120-day statutory deadline for section 251(f) proceedings, the RLECs have engaged in a series of delay tactics and the Maine PUC has not treated the statutory deadline as binding.” *Id.*, Attachment at 5. This is false. Before the Maine PUC, CRC and TWC voluntarily waived the 120-day statutory deadline. *See, e.g.*, Renewed Petition of CRC Communications of Maine, Inc., Docket No. 2009-40, dated January 30, 2009 at 4.

TWC and CRC may not like those results and the drafters of the Recommendation 4.10 of the *NBP* may have been somehow persuaded to agree with TWC. However, the law as well as the Commission's rules and decisions as noted herein are wholly at odds with the position being advocated by CRC and TWC; any requested "clarification" that CRC and TWC seek through the Petition amounts to a change of law not a request to clarify it. At bottom, any reliance made on the cited sections of the *NBP* by CRC and TWC are misplaced and cannot be used to support the relief sought in the Petition without, at best, undermining specific statutory language and extant rules, let alone in an effort to criticize and challenge the Maine PUC for applying the requirements as currently construed.

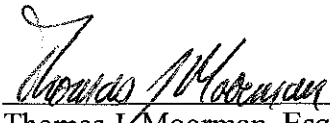
V. Conclusion

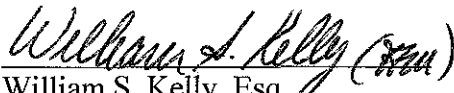
For all of the reasons stated herein, the Petition should be dismissed. The factual contentions that CRC and TWC make in the Petition with respect to actions taken by the Maine PUC are contrary to what actually occurred and fail to properly reflect the very section 251(f)(1) proceeding that CRC and TWC requested the MPUC to undertake. So too, the legal underpinnings of the claims made in the Petition run afoul of explicit language in section 251(c)(1), section 54.301(a) of the Commission's rules, and the Commission's *Z-Tel* decision and *LNP Reconsideration Order*. Moreover, CRC and TWC's suggestion that the *National Broadband Plan's* discussion is binding law is shown to be in error, let alone based on the same incomplete and inaccurate discussion upon which the Petition is based. Even if one is able to leap over these facts and law, the interpretation that CRC and TWC would want the Commission to make with respect to actions under section 253 would write out of the Act section 251(f)(1), a

result that simply cannot be done. Accordingly, UniTel respectfully request that the Commission dismiss the Petition in its entirety.

Respectfully submitted,

UniTel, Inc.

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Date: August 30, 2010

Its Attorneys

Comments of UniTel, Inc.

WC Docket No. 10-143

August 30, 2010

Exhibit 1

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2007-611

June 5, 2008

CRC COMMUNICATIONS OF MAINE, INC.
PETITION FOR CONSOLIDATED
ARBITRATION WITH INDEPENDENT
TELEPHONE COMPANIES TOWARDS AN
INTERCONNECTION AGREEMENT
PURSUANT TO 47 U.S.C. 151, 252.

ORDER ON
RECONSIDERATION

REISHUS, Chairman; VAFIADES, Commissioner

I. SUMMARY

In this Order we deny UniTel's May 7, 2008 Motion for reconsideration of our May 5, 2008 Order opening proceedings pursuant to 47 U.S.C. §251(f)(1)(B) into whether the so-called "rural exemption" should be lifted with respect to CRC's request to interconnect and exchange traffic with UniTel. We also grant CRC's request to withdraw, without prejudice, its Petition for Arbitration and, as a result, find that UniTel's Motion to Dismiss the Petition for Arbitration is moot.

II. FACTS

On November 29, 2007, CRC Communications of Maine, Inc. (CRC) filed a petition seeking arbitration by the Commission, pursuant to Section 252(b) of the federal Communications Act of 1934, as amended by the Telecommunications Act of 1996 (TelAct), of certain issues related to Sections 251 and 252 of the TelAct over which there is claimed to be a dispute between CRC and the following independent local exchange companies (ITCs): UniTel, Inc., Oxford West Telephone Company, Oxford Telephone Company; Tidewater Telecom, Inc., and Lincolnville Telephone Company.

On December 20, 2007, UniTel moved to dismiss the petition for consolidated arbitration claiming, among other things, that as a rural carrier, it is exempt from negotiating for interconnection and the exchange of traffic with CRC, pursuant to the so-called rural exemption set forth in 47 U.S.C. §252(f). On April 2, 2008, following briefing of various jurisdictional issues, the Hearing Examiner issued an Examiner's Report recommending that we commence a proceeding to consider whether to lift the rural exemption.¹

On April 18, 2008, CRC filed written exceptions to the Hearing Examiner's Report, stating that it "believes that the most expeditious path to interconnection with

¹ The arguments made by the parties in connection with these jurisdictional issues are discussed in our May 5, 2008 Order, and are not repeated here.

these ITCs will be to participate in the rural exemption proceeding recommended by the Hearing Examiner,” and seeking leave “to withdraw, without prejudice, its pending request to arbitrate interconnection pursuant to 47 U.S.C. Sections 251(a) and (b) notwithstanding the rural exemption of Sections 251(f)(1).” According to CRC, withdrawal of the petition for arbitration will allow the Commission a “sufficient opportunity to determine first whether to lift the rural exemption as applied to these ITCs before any further negotiations and/or arbitration.”

III. DECISION

On May 5, 2008, we Ordered that rural exemption proceedings be commenced as recommended by the Hearing Examiner. On May 7, 2008, UniTel filed a Motion for Reconsideration. It asks that we revise our Order so as to “provide that the scope of the issues for hearing is restricted to issues of whether or not Unitel has a ‘duty to negotiate’ section 251(a) and (b) interconnection and services as requested by CRC Communications; there is no request for ‘network elements.’”²

Our decision to open “rural exemption” proceedings pursuant to Section 251(f)(1) of the TelAct followed our review of correspondence between the parties. Copies of that correspondence were filed as attachments to CRC’s Petition for Arbitration, and our Order of May 5, 2008 quoted that correspondence in its entirety. We found that “the correspondence between the parties is sufficient to demonstrate that, as of this date, CRC has made a bona fide request for interconnection, services, or network elements of the rural carriers, and that the rural carriers have, in turn, properly raised the rural exemption.”³ We decline to revisit or modify this finding, and, accordingly, deny the Motion for Reconsideration. The parties will present evidence and arguments in this matter to support their various positions regarding whether and to what extent the rural exemption may or should be lifted as to UniTel. We decline, at this early stage of these

² UniTel’s May 7, 2008 Motion also seeks additional relief that cannot be characterized as either a request for reconsideration or clarification. In any event, we observe that many of these issues, such as the bifurcations of cases so that there is one rural exemption docket for each ITC, UniTel’s request that CRC be ordered to further specify the services and interconnections it seeks, and UniTel’s request that TAM be permitted to intervene as a party, have been resolved by the Hearing Examiner in a Procedural Order dated May 12, 2008.

³ CRC’s July 5, 2007 letter to UniTel, and the other ITCs, included the following statement: “This letter is a bona fide request by CRC Communications of Maine to interconnection with [name of ITC] pursuant to section 251(a), (b) and (c) of the Telecommunications Act of 1996.” UniTel’s response, dated August 9, 2007, included the following statement: “This is a response to your letter of July 5, 2007 requesting to negotiate an interconnection agreement pursuant to 47 U.S.C. 251(a), (b), and (c).” In the next paragraph, UniTel further stated the following: “Please be advised that UniTel, Inc., hereby claims its exemption from any duty to negotiate, provide services, network elements or interconnection to CRC. Please see 47 USC 251 and 252, including but not limited to subsection 251(f)(1), for such authority.”

rural exemption proceedings, to pre-determine the scope of the relief to which any party may be entitled.

UniTel also requests that we clarify the status of CRC's Petition for Arbitration, and UniTel's Motion to Dismiss the petition. We hereby grant CRC's request to withdraw its Petition for Arbitration, as articulated in its April 18, 2008 Exceptions to the Examiner's Report. UniTel's motion to dismiss the Petition for Arbitration is therefore moot. Docket 2007-611 shall be closed, with further filings to be made in the individual rural exemption cases, Dockets, No. 2008-214, 2008-215; 2008-216, 2008-217, and 2008-218.

Accordingly, we

ORDER

1. UniTel's Motion for Reconsideration is denied.
2. CRC's request to withdraw its Petition for Arbitration dated November 29, 2007 is granted.
3. UniTel's Motion to Dismiss the Petition for Arbitration is denied as moot.
4. Docket 2007-611 shall be closed.

Dated at Augusta, Maine, this 5th day of June, 2008.

BY ORDER OF THE COMMISSION

Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR: Reishus
Vafiades

Comments of UniTel, Inc.

WC Docket No. 10-143

August 30, 2010

Exhibit 2

April 18, 2008

Via Electronic Filing and Overnight Mail

Karen M. Geraghty, Administrative Director
Maine Public Utilities Commission
242 State Street
State House Station 18
Augusta, Maine 04333-0018

Re: CRC Communications of Maine, Request for Arbitration With Independent
Telephone Companies Towards an Interconnection Agreement, Docket No. 2007-
611

Dear Administrative Director Geraghty:

On behalf of CRC Communications of Maine, Inc. ("CRC"), I am writing to convey the following comments of CRC in response to the Examiner's Report ("Report"), issued on April 2, 2008. In brief, CRC supports the Hearing Examiner's recommendation to immediately commence a proceeding to determine whether to remove the "rural exemption" established pursuant to 47 U.S.C. 251(f)(1) applicable to the Independent Telephone Companies (ITCs) listed in CRC's Petition. CRC accordingly seeks leave to withdraw, without prejudice, its pending request for Section 252 arbitration at this time, related to the obligations set forth in Sections 251(a) and (b) (while preserving its request for interconnection for these same duties described in 47 U.S.C. Sections 251(a) and (b)).

In the Report, the Hearing Examiner correctly determined that CRC made bona fide requests for interconnection with Unitel, Inc., Oxford West Telephone Company, Oxford Telephone Company, Tidewater Telecom, Inc., and Lincolnville Telephone Company for interconnection. Report at pg. 1. The Hearing Examiner also found that CRC provided for sufficient "notice" to the Commission of its request of the ITCs for interconnection, and that CRC petitioned for arbitration. Report at pg. 1. The Hearing Examiner also found that each of the ITCs responded to CRC's bona fide requests, by asserting that they are "exempt" from the duty of incumbent local exchange carriers to negotiate in good faith towards an interconnection agreement. Report at pg. 1.

Karen M. Geraghty, Administrative Director
Maine Public Utilities Commission
April 18, 2008
Page 2

Based on these preliminary findings, the Hearing Examiner concludes with this statement: "We find that the Commission has jurisdiction to arbitrate such issues but that a prerequisite to the exercise of our authority is that we first consider, as to each ITC whether to lift the so-called "rural exemption." Report at pp 1-2 (citing the procedures set forth in 47 U.S.C. 251(f)(1)(B)).

The Hearing Examiner also explains that rural ILECs are subject to the obligations set forth in Sections 251(a) and 251(b), and these duties must be complied with, regardless of the rural exemption set forth in Section 251(f)(1). Report at pp. 22-23 (citing the FCC's 1997 Local Number Portability Order, at pp. 20-21). However, the Hearing Examiner also suggests that Section 251(f)(1) initially exempts the rural ILECs (such as these ITCs) from a "duty to negotiate" the specific arrangements required in Section 251. Report at pg. 22. Accordingly, the Hearing Examiner recommends that it is the responsibility of the State Commission to make a preliminary determination whether to lift the rural exemption, where an interconnection agreement is sought, and that this proceeding must be concluded within the 120 day period required by Section 251(f)(1)(B)). Report at pp 23, 24.

CRC believes that the most expeditious path to interconnection with these ITCs will be to participate in the rural exemption proceeding recommended by the Hearing Examiner. Accordingly, CRC seeks leave to withdraw, without prejudice, its pending request to arbitrate interconnection pursuant to 47 U.S.C. Sections 251(a) and (b) notwithstanding the rural exemption of Section 251(f)(1).¹ This action will allow the Commission sufficient opportunity to determine first whether to lift the rural exemption as applied to these ITCs before any further negotiations and/or arbitration.

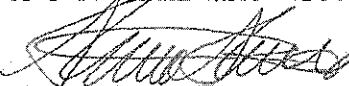
If, after such a proceeding, the Commission agrees with CRC that the rural exemption should be removed, CRC expects that the ITCs will have no legitimate reason to avoid good faith negotiations towards an interconnection agreement, and that such negotiations could produce an agreement voluntarily entered into for joint submission to the Commission for approval. In other words, CRC believes that, upon a decision by this Commission on the rural exemption, a new negotiation period over the specific contract terms would be appropriate between CRC and these ITCs. If no agreement is reached within 135 to 160 days of these anticipated negotiations, then CRC reserves the right to petition the Commission to arbitrate the specific issues that remain in dispute.

¹ Issue No. 1 of CRC's petition asks "Whether the ITCs are required to negotiate with CRC in good faith towards an interconnection agreement for the items set forth in Sections 251(a) and (b) of the TelAct."

ADLER POLLOCK & SHEEHAN P.C.

Karen M. Geraghty, Administrative Director
Maine Public Utilities Commission
April 18, 2008
Page 3

Please let me know if you have any questions with regards to these comments filed on behalf of CRC in response to the Examiner's Report of April 2, 2008.

Respectfully submitted,
CRC Communications of Maine, Inc.

By its attorney: Alan M. Shoer, Esq.
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AMS/bck

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Comments of UniTel, Inc.

WC Docket No. 10-143

August 30, 2010

Exhibit 3

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

PROCEDURAL ORDER

May 12, 2008

CRC COMMUNICATIONS OF MAINE, INC.
Petition for Consolidated Arbitration with
Independent Telephone Companies towards
an Interconnection Agreement Pursuant to 47
U.S.C. 151, 252.

Docket No. 2007-611

MAINE PUBLIC UTILITIES COMMISSION
Investigation pursuant to
47 U.S.C. § 251(f)(1) regarding CRC
Communication of Maine's request of Unitel,
Inc.

Docket No. 2008-214

MAINE PUBLIC UTILITIES COMMISSION
Investigation pursuant to
47 U.S.C. § 251(f)(1) regarding CRC
Communication of Maine's request of Oxford
West Telephone Company.

Docket No. 2008-215

MAINE PUBLIC UTILITIES COMMISSION
Investigation pursuant to
47 U.S.C. § 251(f)(1) regarding CRC
Communication of Maine's request of Oxford
Telephone Company.

Docket No. 2008-216

MAINE PUBLIC UTILITIES COMMISSION
Investigation pursuant to
47 U.S.C. § 251(f)(1) regarding CRC
Communication of Maine's request of
Lincolnvile Telephone Company.

Docket No. 2008-217

MAINE PUBLIC UTILITIES COMMISSION
Investigation pursuant to
47 U.S.C. § 251(f)(1) regarding CRC
Communication of Maine's request of
Tidewater Telecom, Inc.

Docket No. 2008-218

I. REPORT OF MAY 9, 2008 CONFERENCE OF COUNSEL

In furtherance of the Commission's May 5, 2008 Order in Docket No. 2007-611, a conference of counsel was held for the purpose of establishing a procedural schedule for the above-captioned cases. After an opportunity for each party to be heard, the Hearing Examiner determined that a separate docket should be opened for each of these "rural exemption" cases, and that the cases will proceed simultaneously.

Discussion was also had regarding the burden of proof in these cases and the consensus is reflected in the order in which pre-filed testimony will be submitted.

II. MOTIONS FOR JOINDER AND INTERVENTION

The deadline for motions to join any other person as a party is **May 14, 2008**.

The deadline for intervention is **May 16, 2008**.

III. PROCEDURAL SCHEDULE

At the May 9, 2008, conference of counsel, the parties developed¹, and the Hearing Examiner established, the following procedural schedule to govern these proceedings:

CRC to file a detailed "statement of request" with respect to each ITC ²	May 14, 2008
CRC's data requests	May 14, 2008
ITCs' response to data requests	May 23, 2008

¹ The parties explicitly waived any objections they may have in connection with the fact that this schedule would result in a Commission decision beyond 120 days from the date of the Commission's May 5, 2008 Order in Docket 2007-611.

² ITC, or independent telephone company, refers to the rural local exchange company that is the subject of each "rural exemption" docket.

CRC to file Direct testimony	June 6, 2008
ITCs' data requests	June 13, 2008
CRC's responses to data requests	June 23, 2008
ITCs to file Direct Testimony	July 9, 2008
CRC's data requests	July 16, 2008
ITCs' response to data requests	July 25, 2008
OPA's Testimony ³	August 1, 2008
CRC Rebuttal Testimony to ITC case	August 1, 2008
ITC' Surrebuttal to CRC case	August 8, 2008
CRC's and ITCs' Rebuttal to OPA case	August 8, 2008
Hearings	August 12-14, 2008
Post-Hearing Briefs	August 27, 2008
Examiner's Report	Sept. 10, 2008
Exceptions / reply briefs	Sept. 22, 2008

IV. Electronic Service

As agreed to by counsel present at the May 9, 2008 conference, service of documents in this case is to be completed via electronic service list.

³ The OPA agreed that it will file only one round of testimony.

V. Protective Orders

Any motion for the issuance of a protective order relating to discovery material claimed to be confidential must be accompanied by a draft, proposed protective Order.

BY ORDER OF THE HEARING EXAMINER

Andrew S. Hagler

Comments of UniTel, Inc.

WC Docket No. 10-143

August 30, 2010

Exhibit 4

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ELECTRONICALLY FILED ON 05-14-2008

THIS IS A VIRTUAL DUPLICATE OF THE ORIGINAL HARD COPY SUBMITTED TO THE COMMISSION
IN ACCORDANCE WITH ITS ELECTRONIC FILING INSTRUCTIONS.

May 14, 2008

Via Electronic Mail and Federal Express

Karen M. Geraghty, Administrative Director
Maine Public Utilities Commission
242 State Street
State House Station 18
Augusta, Maine 04333-0018

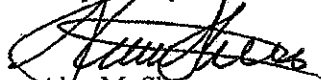
**Re: Investigation pursuant to 47 U.S.C. § 251(f)(1) regarding CRC
Communications of Maine's request of Unitel, Inc., Docket No. 2008-
214**

Dear Ms. Geraghty:

Pursuant to the procedural schedule established by the Hearing Examiner in this proceeding, enclosed are an original and one copy of CRC Communications of Maine, Inc.'s ("CRC's") Statement of Request for Interconnection Agreement with Unitel, Inc., and CRC's First Data Requests addressed to Unitel, Inc.

Please let me know if you have any questions concerning this filing.

Respectfully submitted,


Alan M. Shoer

cc: Service List via email

Enclosure/Attachment

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Member firms of the State Capital Global Law Firm Group practice
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**STATE OF MAINE
PUBLIC UTILITIES COMMISSION**

INVESTIGATION PURSUANT TO 47 U.S.C. §)	
251(F)(1) REGARDING CRC)	Docket No. 2008-214
COMMUNICATIONS OF MAINE'S REQUEST)	
OF UNITEL, INC.)	

**CRC Communications of Maine, Inc.'s
Statement of Request for Interconnection
With Unitel, Inc.**

In this proceeding, CRC Communications of Maine, Inc., d/b/a Pine Tree Networks ("CRC"), a certified local exchange carrier ("CLEC"), seeks an interconnection agreement with Unitel, Inc. ("Unitel"). As pointed out in CRC's Petition filed in Docket No. 2007-465 (filed on September 20, 2007), and in CRC's Petition for Arbitration in this Docket (filed on November 29, 2007), CRC seeks interconnection with the Unitel in order to provide voice over internet protocol (VoIP), and related telecommunications services, in the rural ILEC's territory in Maine. Accordingly, CRC has sought an interconnection agreement with Unitel so that the parties can arrange for the mutual exchange of traffic and for other needed services.

The type of interconnection arrangements sought by CRC in such an interconnection agreement with Unitel in this proceeding, and the specific interconnection arrangements sought by CRC for interconnection with Unitel have been identified to Unitel for many months. For instance, as the Commission recently recognized in its May 5, 2008 Order, CRC has already made bona fide requests to interconnect and exchange telephone traffic with Unitel under each of

section 251's subsections. Order, Docket No. 07-611, at 1 (Maine PUC May 5, 2008) ("Order"). Specifically, on July 5, 2007, CRC sent a letter, along with a draft agreement and appendices, that stated the following:

This letter is a bona fide request by CRC Communications of Maine to interconnect with [Unitel] pursuant to section 251(a)(b) and (c) of the Telecommunications Act of 1996. The interconnection terms in which CRC Communications of Maine is primarily interested are provisions regarding mutual exchange of traffic, number porting, reciprocal compensation and dialing parity.

CRC's July 5, 2007 letter also referenced meetings with Unitel and other ITCs and the presentation of a draft agreement and appendices for Unitel's review. Specifically, the draft interconnection agreement set forth a request for interconnection "to interconnect their networks at mutually agreed upon points of interconnection to provide, directly or indirectly, Telephone Exchange Services and Exchange Access to residential and/or business End Users in the state of Maine" and to "interconnect their networks and facilities and provide to each other services as required by Sections 251(a) and (b) of the Telecommunications Act of 1996 . . .".¹ The draft interconnection agreement, explaining in detail the specific interconnection arrangements sought by CRC with the Unitel, was also attached as "Exhibit 'C'" to CRC's Petition for Arbitration, filed on November 29, 2007, (having been previously provided to Unitel for its review).

CRC requests interconnection and related services pursuant to Sections 251(a), 251(b), 251(c)(1) and 251(c)(2). While CRC initially took the position that it was entitled to obtain interconnection and related services solely pursuant to Sections 251(a) and 251(b) — without implicating the rural exemption provision in Section 251(f) — the Commission's Order has

¹ CRC has sought, and obtained, authorizations from the Commission to provide competitive services in each of the service territories covered by these ITCs.

rendered that position moot. In particular, the Commission ruled that it "must consider, as to each ITC, whether to lift the so-called 'rural exemption'" as a prerequisite to compelling negotiation and/or arbitration. Order at 1.

Moreover, the Commission stated that, while "[a] rural ILEC is not exempt from the obligations set forth in § 251(a) and § 251(b)," it is "exempt from the duty to negotiate in good faith." Order at 14. In fact, since the rural exemption provision by its terms applies only to a rural telephony company's obligations under Section 251(c), 47 U.S.C. § 251(f)(1)(A), CRC submits that the Commission's decision to commence an exemption proceeding necessarily means that CRC is also seeking interconnection obligations under Section 251(c) to the extent that it is consistent with its request for interconnection for the obligations set forth in § 251(a) and § 251(b) and the requirement for the ILECs to negotiate in good faith.

For example, the obligations listed in Section 251(c)(2) also relate to interconnection for the items that are provided in Sections (a) and (b), so that (c)(2) is also now relevant to CRC's interconnection request. At the same time, CRC does not seek any services beyond physical interconnection and the mutual exchange of traffic. In particular, CRC is not seeking interconnection arrangements with these ITCs for the following: access to unbundled network elements (251(c)(3)), resale (251(c)(4)), or collocation arrangements (251(c)(6)).

Accordingly, the agreement proposed by CRC specifies the interconnection arrangements required, by CRC, including terms for access to rights of way, such as poles, ducts, conduits owned and controlled by the ITC (Section 50.1). The CRC proposed agreement further seeks dialing parity arrangements (Section 50.2). The CRC proposed agreement further identifies the specific interconnection arrangements sought for such specifics (as referenced in the attachments) as the type of Interconnection Trunking Arrangements, the Network

Interconnection Methods contemplated, the Number Portability obligations, other aspects of numbering, pricing and reciprocal compensation arrangements, all as required by Sections 251(a) and (b) of the TelCo Act of 1996.

The interconnection arrangement in the CRC proposed agreement are well known to these ITCs, to TAM, to the OPA, and to the Staff at the Commission, through several similar filings of agreements voluntarily entered into, and approved, in recent Orders dated May 5, 2008 in Docket Nos. 2008-132 (CRC and Saco River Telephone), 2008-133 (CRC and Pine Tree Telephone), 2008-136 (CRC and Standish Telephone Company), 2008-137 (CRC and Sidney Telephone Company), 2008-139 (CRC and Maine Telephone Company), 2008-140 (CRC and Community Service Telephone Company), and 2008-141 (CRC and China Telephone Company).

In short, CRC is seeking to interconnect with Unitel pursuant to an interconnection agreement to allow the companies to exchange and compensate each other for telephone exchange traffic and to allow subscribers the ability to discontinue the services of one provider for the services of the other provider while keeping their same numbers. Also, customers may want to place their telephone numbers in the Unitel telephone directory.

Each of these issues and other related telecommunications services that CRC will require of Unitel is explained in the proposed interconnection agreement that Unitel has in its possession and as filed with the Commission in Docket 2007-611. CRC will need these interconnection arrangements so as to provide telecommunications services and competitive choices to Maine consumers located within each of these ITC franchise territories.

CRC looks forward to explaining any of these items further in its pre-filed testimony and as further developed in response to specific questions from the parties and the Commission.

Respectfully submitted,

CRC Communications of Maine, Inc.

By its attorney:

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Date: May 14, 2008

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Comments of UniTel, Inc.

WC Docket No. 10-143

August 30, 2010

Exhibit 5

ELECTRONICALLY FILED ON MAY 19, 2008

May 19, 2008

Ms. Karen Geraghty,
Administrative Director
Public Utilities Commission
18 State House Station
Augusta, Maine 04333-0018

**THIS IS A VIRTUAL DUPLICATE OF THE ORIGINAL HARDCOPY
SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH
ITS ELECTRONIC FILING INSTRUCTIONS**

RE: Docket Nos. 2007-611 and 2008-214

Dear Ms. Geraghty,

I am writing on behalf of CRC Communications of Maine, Inc. ("CRC") in order to respond to two points presented in the May 14, 2008 correspondence submitted by counsel on behalf of Unitel, Inc. in reference to the above proceedings.

First, it is CRC's position that there is no relevant reason for the Commission to amend its Order to determine whether or not Unitel "received" another copy of the proposed interconnection agreement in the context of the July 5, 2007 letter that formed the basis for the bona fide request of CRC. As the Commission determined, correctly, in its May 5, 2008 Order, CRC's July 5, 2007 letter to Unitel established that CRC made a bona fide request for interconnection with Unitel. Order at pg. 1. In other words, the letter that CRC sent to Unitel, and the other rural ILECs, is the document that formed the basis for the ruling that CRC initiated a bona fide request for interconnection with these companies.

Whether or not Unitel received copies of the proposed interconnection agreement as an attachment to the July 5, 2007 letter, or in meetings a year earlier, should in no way impact the Commission's decision that CRC's letter of July 5, 2007 is sufficient by itself to constitute a bona fide request for interconnection. And, in any event, Unitel concedes in its May 14, 2008 letter that it received copies of the proposed agreement in 2006. Moreover, the agreements were filed as attachments with the petition for arbitration in 2007-611.

ADLER POLLOCK & SHEEHAN P.C.

Ms. Karen Geraghty,
Administrative Director
Public Utilities Commission
May 19, 2008
Page 2


Second, Unitel's May 14, 2008 letter asserts that counsel for CRC "made clear" that CRC is not seeking any interconnection rights secured by 251(c)(2-6). It is accurate to say that CRC is not seeking interconnection with Unitel (and the other rural ILECs) with respect to UNEs (251(c)(3)), resale (251(c)(4)), or collocation (251(c)(6)).

However, now that the Commission has determined that a request for interconnection with a rural ILEC necessarily implicates Section 251(c) (because that is the only section that triggers a rural exemption analysis per 251(f)(1)(A)) CRC also seeks the interconnection protections that complement its request for interconnection pursuant to 251(a) and (b), and which are provided by 251 §§ (c)(1), 251(c)(2) and 251(c)(5).

For example, 47 U.S.C. § 251(c)(1) provides the duty to negotiate the obligations in 251(b). And, 47 U.S.C. § 251(c)(2) provides the following complementary interconnection duties of an ILEC: (A) transmission and routing of telephone exchange service and exchange access; (B) interconnection at technically feasible points; (C) interconnection that is equal in quality to the terms offered by the ILEC to itself or other party; (D) on rates, terms and conditions that are reasonable and nondiscriminatory. Finally, 47 U.S.C. § 251(c)(5) requires that the ILEC provides certain reasonable "notice" to interconnecting companies regarding changes to the ILEC's network that would affect the "interoperability" of the network.

CRC seeks the protections afforded by these cited sections of 251(c), and requests that the rural exemption be lifted so as to allow further negotiations towards an interconnection agreement for the interconnection rights secured by these sections of 251(c) that complement the obligations for interconnection set forth in 47 U.S.C. §§ 251(a) and (b) of the Tel Act.

Respectfully Submitted,



ALAN M. SHOER

cc: Andrew Hagler, Hearing Examiner
Service list (via electronic mail)

AMS/bck

CERTIFICATE OF SERVICE

I, Thomas J. Moorman, do hereby certify that on this 30th day of August, 2010, a true and correct copy of the foregoing comments of UniTel, Inc. were emailed to the individuals noted below.

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